

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CLYDE LEWIS aka LOUIS RANDOLPH,

Plaintiff,

v.

JAMES DZURENDA, et al.,

Defendants.

Case No. 2:19-cv-01729-KJD-DJA

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Presently before the Court is Defendants' Motion for Summary Judgment (#35). Plaintiff filed a response in opposition (#61) to which Defendant replied (#66).

I. Factual and Procedural History

Plaintiff Clyde Lewis ("Lewis") brought his complaint pursuant to 42 U.S.C. § 1983. Following the mandatory screening process required by the Prison Litigation Reform Act, the Court permitted the following claims, relevant to this motion, to survive: Claim 1 alleging violations of free exercise of religion, equal protection, and the RLUIPA against Correctional Officer ("C/O") Mesa; and (2) Claim 4 against Sergeant Fowler ("Sgt. Fowler") alleging violation of the Fourteenth Amendment right to due process based on Plaintiff's disciplinary segregation.

A. Claim 1

Deputy Directors, Wardens, and Chaplains are responsible for the practice of Religious and Faith Group services in the Nevada Department of Corrections ("NDOC"). (35-2, at 2). The NDOC is tasked with taking "the necessary steps to ensure inmates are provided their constitutional right to practice their religion." *Id.* "The religious needs of inmates will be met, taking into consideration safety, security, available resources, and need." *Id.* The Southern Desert Correctional Center ("SDCC") adopted OP 562 guidelines which provide that "[i]nmates

1 will be authorized and permitted to exercise accepted and approved religious activities within
2 their assigned cells. There are no restrictions that prohibit inmates from pursuing their religious
3 preferences within the confines of their assigned cell...” Id. at 3. It also provides that “[i]nmate
4 movement to and from the religious services will be in compliance with all unit movement
5 policies of inmates between housing units and the chapel. Id. The inmate movement guidelines
6 require that all religious services be scheduled, and all requests must be made to the chaplain at
7 least one week in advance. Id. at 4. There are capacity limits for inmates in the chapel at one
8 time. Id. It is also stated that “[i]t shall be the responsibility of all staff to ensure that” the
9 movement procedures and schedules are complied with and maintained. (35-4 at 1).

10 Inmates seeking to sign up for religious activities must first coordinate with either the day or
11 swing shift officers, and then submit their inmate request form for the specified activity to the
12 Chaplain, who then approves the request and enters the approval to the call out roster. (#35-4, 5–
13 6). To account for safety and security within the SDCC, all movement to and from the religious
14 services must be according to the procedures put in place. (#35-3, at 3). Chapel services must
15 operate on a strict schedule to properly accommodate for all the inmates and religions
16 represented at the SDCC. (#35-5, at 3).

17 Lewis practices Islam. (#11, at 7). One Islamic religious practice consists of cleaning oneself
18 before prayer. (#35-5, at 3–4). This requires the washing of the body, including the hands,
19 mouth, nostrils, ears, forehead, throat, arms, elbows, head, neck, fingers, ankles, and feet. Id.
20 This process can be done as long as running water is available and does not necessarily require a
21 shower. Id. Lewis has a sink in his cell. (#35-6, at 3).

22 On March 20, 2015, at approximately 12:19 pm, Lewis was unable to use the shower before
23 the Nation of Islam chapel services began at 1:30 pm. (#11, 7, #35-6, at 3). Other inmates were
24 let out of their cells for gym, and those who did not participate in gym had to remain in their
25 cells. (#1-2, at 24, #35-6, at 2–3). Lewis did not attend the gym that day and thus was unable to
26 leave his cell. Id.

27 C/O Mesa was relieved of his shift duties at 12:56 pm. (#35-6, at 4). The C/O who replaced
28 C/O Mesa for that shift also attempted to release three inmates to the chapel, but per protocol,

1 they were returned to their cells because the chapel was full. Id. C/O Mesa was not on shift
 2 during the time that inmates were released for chapel services. Id. Because Lewis was denied
 3 access to the shower and the chapel services, he filed a grievance with the SDCC mentioning
 4 C/O Mesa on March 20, 2015. (#1-2, 25).

5 **B. Claim 4**

6 Lewis was brought in for a disciplinary hearing on March 2, 2016, after a prison official
 7 charged him with gang activities and possession of contraband. (#35-7, at 2). During a search of
 8 Lewis's cell, his notebook contained writings referencing "Fruit of Islam" which is a
 9 paramilitary wing of the Nation of Islam. Id. Inside the book were the names of fifteen inmates
 10 and their ranking at SDCC, as well as three inmates that had been suspended and/or had bad
 11 standings. (Id., #1-4, at 73–81). These writings were suspiciously related to gang activity and
 12 considered to jeopardize the safety and security of the prison. Id. Sgt. Fowler led the hearing.
 13 (#35-8). During the hearing, Lewis called four witnesses in support of his position. Id. Sgt.
 14 Fowler concluded that Lewis was attempting to create a gang while conducting business for the
 15 paramilitary wing of his religion, and that it was unnecessary and illegal in a prison setting. Id.
 16 Sgt. Fowler found Lewis guilty on both charges. Id.

17 **II. Legal Standard**

18 Summary judgment may be granted if the pleadings, depositions, answers to
 19 interrogatories, and admissions on file, together with affidavits, if any, show that there is no
 20 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
 21 matter of law. See FED. R. CIV. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322
 22 (1986). The moving party bears the initial burden of showing the absence of a genuine issue of
 23 material fact. See Celotex, 477 U.S. at 323. The burden then shifts to the nonmoving party to set
 24 forth specific facts demonstrating a genuine factual issue for trial. See Matsushita Elec. Indus.
 25 Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

26 All justifiable inferences must be viewed in the light most favorable to the nonmoving
 27 party. See Matsushita, 475 U.S. at 587. However, the nonmoving party may not rest upon the
 28 mere allegations or denials of his or her pleadings, but he or she must produce specific facts, by

1 affidavit or other evidentiary materials as provided by Rule 56(e), showing there is a genuine
 2 issue for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). “Where evidence
 3 is genuinely disputed on a particular issue—such as by conflicting testimony—that ‘issue is
 4 inappropriate for resolution on summary judgment.’” Zetwick v. Cnty. of Yolo, 850 F.3d 436,
 5 441 (9th Cir. 2017) (quoting Direct Techs., LLC v. Elec. Arts, Inc., 836 F.3d 1059, 1067 (9th
 6 Cir. 2016)).

7 III. Analysis

8 A. **Claim 1**

9 Lewis alleges that C/O Mesa, under color of state law, violated his rights to the free exercise
 10 of religion, equal protection, and his prisoner rights under RLUIPA.

11 1. Free Exercise of Religion

12 Lewis argues that C/O Mesa violated his constitutional right to the free exercise of his
 13 religion when he was denied use of the shower and chapel services. “Inmates clearly retain
 14 protections afforded by the First Amendment.” O’Lone v. Estate of Shabazz, 107 S.Ct. 2400,
 15 2404 (1987). “In general, a plaintiff will have stated a free exercise claim if: (1) “the claimant’s
 16 proffered belief [is] sincerely held;” and (2) “the claim [is] rooted in religious belief, not in
 17 purely secular philosophical concerns.” Walker v. Beard, 789 F.3d 1125, 1138 (9th Cir. 2015).
 18 “Although prisoners enjoy First Amendment protection, their rights under the Free Exercise
 19 Clause are limited by “institutional objectives and by the loss of freedom concomitant with
 20 incarceration.” Id. “To that end, a prisoner’s Free Exercise Clause claim will fail if the State
 21 shows that the challenged action is “reasonably related to legitimate penological interests.” Id.
 22 The Supreme Court has held that valid penological objectives are “deterrence of crime,
 23 rehabilitation of prisoners, and institutional security.” O’Lone, 107 S.Ct., at 2404. “To ensure
 24 that courts afford appropriate deference to prison officials... prison regulations alleged to
 25 infringe constitutional rights are judged under a ‘reasonableness’ test less restrictive than that
 26 ordinarily applied to alleged infringements of fundamental constitutional rights.” Id.

27 Lewis, a Muslim, surely has a sincerely held belief. However, the Court has not been
 28 presented with evidence sufficient to support the claim that his right to exercise his religious

1 beliefs has been violated. Lewis argues that C/O Mesa wouldn't let Lewis go to the showers
 2 before the Muslim chapel services began because his unit was on lockdown. (#11, at 7). Lewis
 3 claims that C/O Mesa told him "I never read about having to give you people [Muslims]
 4 showers." Id. C/O Mesa has presented evidence that a shower is not required for the washing
 5 process before prayer, but that running water is all that is necessary. (#35-5, at 3-4, see Huda,
 6 *Wudu or Ablutions for Islamic Prayer*, LEARN RELIGIONS, Aug. 27, 2020,
 7 <https://www.learnreligions.com/wudu-ablutions-for-islamic-prayer-3879518>). Lewis had a sink
 8 in his cell so he could have washed himself before either praying in his cell or attending chapel
 9 services. (#35-6, at 3). Lewis has not provided any evidence to refute this point. In fact, Lewis
 10 himself states in his response that "[r]egular ablution or WuDu, however, can be performed with
 11 running water from [the] sink."

12 Lewis also asserts that at 1:39 pm he requested to go the chapel, but C/O Mesa told him that
 13 services were canceled. Id. at 8. Lewis says that services were not canceled because he could see
 14 from his cell that other people were being let inside the entrance of the chapel for services. Id.
 15 However, C/O Mesa has presented evidence showing that he was relieved of his shift duties at
 16 12:56 pm. (#35-6, at 4). Therefore, C/O Mesa could not have been the one to deny Lewis
 17 entrance to the chapel. Additionally, C/O Mesa has presented evidence that the C/O who
 18 replaced C/O Mesa attempted to release three inmates to enter the chapel, but per protocol, they
 19 were returned to their cells because the chapel was full. Id. Capacity limitations exist to preserve
 20 safety within the prison and is a valid penological interest. See O'Lone, 482 U.S. at 351-52.
 21 Lewis was also able to participate in prayer within the confines of his cell so being denied chapel
 22 services on this occasion was not a violation of his free exercise rights. Plaintiff has failed to
 23 meet his burden to demonstrate that a genuine issue of material fact exists. Lewis was not denied
 24 his right to freely exercise his religion. Therefore, the Court grants summary judgment in favor
 25 of C/O Mesa on Plaintiff's free exercise claim.

26 2. Equal Protection

27 Lewis argues that C/O Mesa violated his right to equal protection under the law. The
 28 "Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction

1 the equal protection of the laws’ which is essentially a direction that all persons similarly situated
 2 should be treated alike.” City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439
 3 (1985). “To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause
 4 of the Fourteenth Amendment a plaintiff must show that the defendant’s acted with an intent or
 5 purpose to discriminate against the plaintiff based upon membership in a protected class.” Lee v.
 6 City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001).

7 Lewis alleges that C/O Mesa prohibited him from using the showers and attending the
 8 religious services because Lewis is Muslim. (#11, at 7–8). However, Lewis fails to point to any
 9 specific evidence to support this allegation besides his testimony that showering is required, and
 10 that C/O Mesa lied to him, saying that the service was canceled. Id. It is undisputed that a full
 11 shower is not required for proper washing before prayer. (#35-5, at 3–4, see Huda, *Wudu or*
 12 *Ablutions for Islamic Prayer*, LEARN RELIGIONS, Aug. 27, 2020,
 13 <https://www.learnreligions.com/wudu-ablutions-for-islamic-prayer-3879518>). Lewis stated that
 14 he requested to attend chapel services at 1:39 pm and was denied, but C/O Mesa has provided
 15 undisputed evidence showing that he was relieved of his duties on shift at 12:56 pm, so C/O
 16 Mesa could not have denied Lewis access to the chapel. (#35-6, at 4). Further, the chapel service
 17 was already full at that time, as is demonstrated by the shift log, so Lewis would have been
 18 unable to attend anyway. Id. Finally, nothing was stopping Lewis from practicing in his cell.
 19 (#35-2, at 2). Without more evidence demonstrating that C/O Mesa acted with intent or purpose
 20 to discriminate against Lewis because of his religious beliefs, Lewis cannot satisfy the burden
 21 required of the nonmoving party. Thus, summary judgment is granted to Defendant Mesa on the
 22 equal protection claim.

23 3. RLUIPA

24 Lewis argues that C/O Mesa, under color of state law, violated his rights under RLUIPA.
 25 RLUIPA provides that:

26 No government shall impose a substantial burden on the religious
 27 exercise of a person residing in or confined to an institution... unless
 28 the government demonstrates that imposition of the burden on that
 person– (1) is in furtherance of a compelling governmental interest;
 and (2) is the least restrictive means of furthering that compelling
 governmental interest.

1 42 U.S.C. § 2000cc-1(a)(1)-(2).

2 “RLUIPA is ‘to be construed broadly in favor of protecting an inmate’s right to exercise his
3 religious beliefs.’” Shilling v. Crawford, 536 F.Supp.2d 1227, 1232 (D. Nev. 2008). “The
4 plaintiff bears the initial burden of demonstrating a prima facie claim that the prison’s policies or
5 actions constitute a substantial burden on the exercise of his religious beliefs.” Id. “If the plaintiff
6 meets this burden, the prison bears the burden of persuasion to prove that the substantial burden
7 both furthers a compelling belief and employs the least restrictive means.” Id. “RLUIPA does not
8 authorize suits for damages against state officials in their individual capacities because individual
9 state officials are not recipients of federal funding and nothing in the statute suggests any
10 congressional intent to hold them individually liable. Jones v. Williams, 791 F.3d 1023, 1031
11 (9th Cir. 2015).

12 Lewis alleges that C/O Mesa denied him use of the shower and religious services, which was
13 a substantial burden on the exercise of his beliefs. (#11, 7–10). However, showering was not
14 necessary for him to practice his religion, and C/O Mesa was not on shift when Lewis asked to
15 be taken to the chapel to attend services. (#35-5, at 3–4, #35-6, at 4). Additionally, Lewis could
16 have practiced his religion within his cell without attending the chapel services, which were
17 already full when Lewis wanted to attend. (#35-6, at 4). The evidence does not establish a
18 substantial burden on Lewis’ exercise of religion.

19 Lewis is also asking for monetary damages in addition to declaratory judgment and
20 injunctive relief. (#11, at 32). RLUIPA does not authorize suits for damages, and even if it did,
21 Lewis has failed to meet his burden of proving a genuine issue of material fact for a jury to
22 deliberate about. Therefore, summary judgment is granted to Defendant Mesa on the RLUIPA
23 claim.

24 **B. Claim 4**

25 Lewis also claims that his Fourteenth Amendment due process rights were violated during
26 his disciplinary hearing with Sgt. Fowler. (#11, at 21). Plaintiff must establish the existence of a
27 liberty interest when stating a cause of action for deprivation of procedural due process. See
28 Sandin v. Conner, 515 U.S. 472, 473 (1995). Prisoners have a liberty interest when confinement

1 “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of
 2 prison life.” Id. at 484. The Supreme Court held that prisoners facing proceedings where the loss
 3 of good-time or an imposition of solitary confinement receive advance written notice of the
 4 claimed violation, a written statement of fact findings, and “a right to call witnesses and present
 5 documentary evidence” so long as it would not be “unduly hazardous to institutional safety or
 6 correctional goals[.]” Wolff v. McDonnell, 418 U.S. 539, 540 (1974). The Court held that
 7 confrontation and cross-examination of witnesses was not constitutionally required. Id. The
 8 Court also held that “the requirements of due process are satisfied if some evidence supports the
 9 decision by the prison disciplinary board...” Superintendent, Mass. Corr. Inst., Walpole v. Hill,
 10 472 U.S. 445, 455 (1985). This is because “[p]rison disciplinary proceedings take place in a
 11 highly charged atmosphere, and prison administrators must often act swiftly on the basis of
 12 evidence that might be insufficient in less exigent circumstances. The fundamental fairness
 13 guaranteed by the Due Process Clause does not require courts to set aside decisions of prison
 14 administrators that have some basis in fact.” Id.

15 Lewis was given notice of his charges on December 18, 2015, which was two days after the
 16 “date of incident.” (#35-7, at 2). The notice of charges included a report or findings of fact, that
 17 described the incident and why the correctional officer believed Lewis was committing a
 18 violation of prison policy. Id. Lewis argues in his response that Sgt. Fowler refused to make
 19 Lewis’ witnesses available, but the second half of the disciplinary hearing with Sgt. Fowler was
 20 recorded, and Sgt. Fowler stated that Lewis called four witnesses: Chaplin Youngblood, Warden
 21 Williams, Inmate Dershawn Reed, and Inmate William England. (#35-5). Sgt. Fowler stated in
 22 the recording that he spoke to all four witnesses, and Lewis did not object. Id. Summary
 23 judgment requires that “the nonmoving party may not rest upon the mere allegations or denials
 24 of his or her pleadings, but must produce specific facts... showing there is a genuine issue for
 25 trial.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). Lewis fails to point to
 26 anything specific which would support his claim that he was denied his right to call witnesses,
 27 and the evidence supplied by Sgt. Fowler refutes this claim. Sgt. Fowler found that Lewis was
 28 guilty of the allegations and he based that conclusion on his discussions with the witnesses and

1 the evidence contained in Lewis' notebook. (#35-5).

2 Sgt. Fowler also gave notice to Lewis that he had ten days to appeal Sgt. Fowler's decision.
3 Id. The Court finds this meets the "some evidence" standard required of a prison disciplinary
4 hearing. Without more pointed evidence by Lewis showing a lack of due process, the Court finds
5 there is no genuine issue of material fact, and therefore, summary judgment for Claim 4 is
6 granted.

7 **C. Statute of Limitations**

8 C/O Mesa and Sgt. Fowler argue that Lewis has failed to file his complaint in accordance
9 with the applicable statute of limitations. § 1983 does not contain its own statute of limitations so
10 "federal courts borrow the statute of limitations for § 1983 claims applicable to personal injury
11 claims in the forum state." Rodriguez v. Dzurenda, No. 3:17-cv-00205-MMD-CBC, 2019 WL
12 2612661 at *4 (D. Nev. Apr. 5, 2019). The statute of limitations for personal injury claims in
13 Nevada is two years. NRS 11.190(4)(e). "Federal law determines when a cause of action accrues
14 and when the statute of limitations begins to run for a § 1983 claim. Under federal law, a cause
15 of action accrues when the plaintiff knows or has reason to know of the injury that is the basis of
16 the action." Belanus v. Clark, 796 F.3d 1021, 1025 (2015). "[T]he applicable statute of
17 limitations must be tolled while a prisoner completes the mandatory exhaustion process." Brown
18 v. Valoff, 422 F.3d 926, 943 (9th Cir. 2005).

19 Lewis first filed a grievance against C/O Mesa on March 20, 2015. (#1-2, at 25). This is the
20 first day he knew of his alleged injury. Lewis filed the present suit on October 3, 2019, which is
21 over three years between the time the tolling period ended and the present case began. (#1).
22 Therefore, Lewis has failed to file § 1983 in a timely manner. Thus, if the Court was not
23 dismissing Plaintiff's action for failing to raise genuine issues of material fact, it would dismiss
24 his claims pursuant to the statute of limitations.

25 **D. Qualified Immunity**

26 C/O Mesa and Sgt. Fowler also argue summary judgment is appropriate because they are
27 both entitled to qualified immunity. Qualified immunity protects "governmental officials
28 performing discretionary functions... from liability for civil damages insofar as their conduct

1 does not violate clearly established statutory or constitutional rights of which a reasonable person
 2 would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In determining whether an
 3 individual officer is entitled to qualified immunity, courts “ask (1) whether the official violated a
 4 constitutional right and (2) whether the constitutional right was clearly established.” C.B. v. City
 5 of Sonora, 769 F.3d 1005, 1022 (9th Cir. 2014). Qualified immunity protects “all but the
 6 incompetent or those who knowingly violate the law.” Stanton v. Sims, 571 U.S. 3, 6 (2013).

7 1. C/O Mesa

8 C/O Mesa is entitled to qualified immunity because there is no evidence indicating that he
 9 violated Lewis’ First Amendment rights. Lewis did not require a shower to wash himself and
 10 C/O Mesa could not have denied him the right to attend chapel services because C/O Mesa was
 11 not on shift during the time Lewis alleges he was. (#35-5, at 3–4, #35-6, at 4). The Court is
 12 sympathetic to Lewis’ devotion to his faith; however, he has not presented evidence enough to
 13 support his claim that his rights were violated by C/O Mesa.

14 2. Sgt. Fowler


15 Sgt. Fowler is entitled to qualified immunity because there is no evidence that he denied
 16 Lewis his due process rights during the disciplinary hearing. Lewis received a charging notice in
 17 a timely manner along with a statement of the facts, and he was able to call witnesses. (#35-7, at
 18 2, #35-5). Sgt. Fowler listened to those witnesses and concluded that Lewis was guilty. (#35-5).
 19 Because “some evidence” supports the decision by Fowler the Court defers to that decision. See
 20 Superintendent, Mass. Corr. Inst., Walpole, 474 U.S. at 455.

21 IV. Conclusion

22 Accordingly, IT IS HEREBY ORDERED that Defendants’ Motion for Summary Judgment
 23 (#35) is **GRANTED**;

24 **IT IS FURTHER ORDERED** that the Clerk of the Court enter **JUDGMENT** for
 25 Defendants Fower and Mesa and against Plaintiff.

26 DATED this 22 day of September, 2022.

27 
 28 _____
 Kent J. Dawson
 United States District Judge